

**REMARKS**

The Examiner is thanked for the due consideration given the application. Favorable reconsideration is requested in view of the foregoing amendments and the following remarks.

**I. Claim Status and Amendments**

Claims 11-23 are pending in this application and stand rejected.

Claim 11 is amended in a non-narrowing manner to correct inadvertent typographical errors by deleting a repeated word and by correcting punctuation.

No new matter has been added by this amendment.

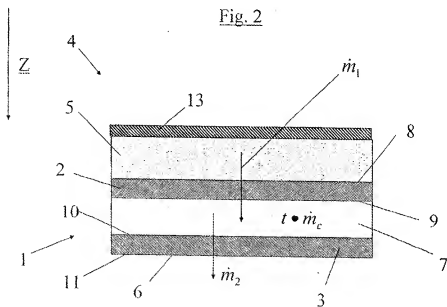
Applicants note that the above claim amendment addresses matters of form only and does not affect the scope of the claims. Accordingly, if the next Office Action on the merits includes a new rejection of one or more claims, the Action must be non-final. For these same reasons, it is believed that this amendment should entered and considered after final rejection. Again, the amendments adds nothing that would require further consideration and/or search, and there is hence no ground for refusing entry of this amendment.

**II. Rejections based on Shimone et al.**

Claims 11-12, 14-18, and 20-23 were rejected under 35 U.S.C. § 102(e) as anticipated by Shimoe (US 2005/0065490) for

the reasons on pages 2-3 of the Office Action. Claim 13 was rejected under 35 U.S.C. § 103(a) as obvious over Shimoe for the reasons on page 3. Claim 19 was rejected under 35 U.S.C. § 103(a) as obvious over Shimoe in view of Noda (US 2001/0044611) for the reasons on pages 3-4. These rejections are respectfully traversed.

The present invention pertains to a breathable backsheet comprising a water vapour permeable first layer and a water vapour permeable second layer for an absorbent article (4) that is illustrated, by way of example, in Figure 2 of the application, which is reproduced below.



As is set forth in independent claim 11, the breathable backsheet includes "a water vapour permeable first layer (2) and a water vapour permeable second layer (3) for an absorbent article (4), wherein the first and second layers are liquid

impermeable." Claim 11 also includes: "an absorbent body adjacent the first layer, said absorbent article being adapted so that the absorbent body, during use, faces towards the user and so that an outside of the backsheet faces away from the user." Claim 11 also requires "said backsheet being water vapour permeable in a direction from the absorbent body to the outside of the backsheet, in a Z-direction, wherein the backsheet comprises a condensation zone between the first and second layers". Lastly, claim 11 requires "said backsheet comprising a hydrophobic distance element placed in the condensation zone creating a space between the first layer and the second layer, wherein the first layer is adapted to allow a first amount  $m_1$  of mass flow water vapour to pass the first layer in the Z-direction, wherein the second layer is adapted to allow a second amount  $m_2$  of mass flow water vapour to pass the second layer in the Z-direction."

The rejections fail, because neither Shimoe et al. nor Noda et al. nor their combination discloses or suggests each and every element of independent claim 11 as noted above.

As disclosed in paragraph [0038], Shimoe et al. relates to a backsheet composite comprising two breathable but hydrophobic nonwoven layers (f2, f3) and a breathable but liquid-impervious plastic film (f4) positioned between the nonwoven layers is disclosed. From Fig. 3 of Shimoe, it would appear that a space is present between the nonwoven layers f2, f3. See also the embodiment in paragraph [0069].

Water vapour permeability in Shimoe is measured on the whole article. Accordingly, there are no permeability values for the nonwoven layers. Moreover, permeability of the nonwoven layers appears to be insignificant. Instead, the water vapour permeability of the plastic film is stated to be determining for the permeability of the whole article as set out in paragraphs [0059] and [0083]. The backsheet composite "allows moisture vapour to be smoothly exhausted from the interior to the exterior of the article 1A" as disclosed in paragraph [0061]. The film acts as a retarding means preventing liquid from penetrating through the backsheet. Accordingly, in the backsheet of Shimoe the film is not a spacing element creating a condensation zone as required in claim 11 of the instant application. Moreover, the nonwoven layers in Shimoe are not liquid impermeable as required by claim 11 of the present application, but instead allow liquid penetration. See paragraph [0083].

Accordingly, the backsheet construction in Shimoe does not have two liquid impermeable layers with a spacer in between. Nor does it have a difference in water vapour permeability between outer layers in the backsheet construction as defined in claim 11 of the present patent application. Consequently, the backsheet construction in Shimoe cannot function the same as the backsheet according to the invention of claim 11. In particular, there is nothing in Shimoe pointing towards a backsheet

construction reducing the risk of moisture condensing on the outside of the backsheet.

The Official Action takes the view that the Shimoe backsheet has the same construction as the backsheet according to the present invention and therefore must have the same function. However, this is clearly not the case for the reasons explained above. Thus, contrary to the position in the Official Action the construction of the Shimoe backsheet is not the same as in the invention of claim 11.

Further, with reference to Fig. 3 in Shimoe, Applicants note that the backsheet composite of Shimoe comprises: (1) a breathable hydrophobic nonwoven (f2) that is intermittently joined by adhesive to the breathable but liquid-impervious plastic film (f4); and (2) a second breathable hydrophobic nonwoven (f3) is arranged immediately beneath the plastic film (f4) without the use of any binder.

Applicants respectfully submit that this construction implies that no condensation zone will be achieved between the nw/film laminate (f2/f4) and the second single nonwoven layer (f3). The water impermeable nw/film laminate (f2/f4) corresponding to the first layer in the backsheet construction according to the present invention would have a considerably lower mass flow of water vapour  $m_1$ , than the mass flow of water vapour  $m_2$  of the second layer (f3). This construction, which is the opposite of that in the present invention, means that any

moisture passing through the nw/film laminate would directly continue further out through the single nonwoven layer. Consequently, no condensation of moisture will take place between the layers f2 and f3 in the backsheet of Shimoe.

This stands in contrast to the backsheet of claim 11, which requires "wherein the first layer is adapted to allow a first amount  $m_1$  of mass flow water vapour to pass the first layer in the Z-direction, wherein the second layer is adapted to allow a second amount  $m_2$  of mass flow water vapour to pass the second layer in the Z-direction, wherein  $m_2$  is less than or equal to  $m_1$ , wherein the condensation zone is adapted to temporarily condense and store an amount  $t \cdot m_c$  of water vapour where  $m_c$  is the difference between  $m_1$  and  $m_2$ , and where  $t$  is the time period during which the condensed water vapour  $m_c$  is stored, and where  $m_2$  is less than a maximum amount  $m_x$  of mass flow water vapour allowed to pass the second layer without forming any condensation of water vapour on the outside of the backsheet."

For these reasons, it is clear that Shimoe fails to disclose or suggest each and every element of independent claim 11. Thus, Shimoe fails to anticipate or render obvious claim 11. Claim 11 and all claims dependent thereon are thus novel and patentable over Shimoe.

The secondary reference of Noda fails to remedy the above-noted deficiencies in Shimoe. Noda was relied upon for

allegedly disclosing the thickness of the hydrophobic element in order to reject claim 19, which depends on claim 11. However, Noda fails to mention any of the above-noted elements with regards to claim 11 that are missing from the disclosure of Shimoe. Thus, Noda fails to address the deficiencies of Shimoe.

One of ordinary skill and creativity would thus fail to produce each and every element of the backsheet of claim 11 from the knowledge of Shimoe alone or when combined with Noda. Thus, a *prima facie* case of obviousness has thus not been made.

The above anticipation and obviousness rejections are believed to be overcome, and withdrawal thereof is respectfully requested.

### **III. Conclusion**

Having addressed all the outstanding issues, the amendment is believed to be fully responsive. In view of the above, it is respectfully submitted that the application is in condition for allowance and notice to that effect is hereby requested. If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON

/Jay F. Williams/  
Jay F. Williams, Reg. No. 48,036  
209 Madison Street, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

JFW/ml